



Exempt Action Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-60
Regulation title	Standards and Regulations for Licensed Adult Day Care Centers
Action title	Revise Adult Day Care Regulation
Final agency action date	February 15, 2012
Document preparation date	January 11, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The following sections are amended to make the language consistent with the Code of Virginia.

22 VAC40-60-10. Definitions. The definition of “Adult day care center” was amended to reflect the current language of § 63.2-100 of the Code of Virginia.

22 VAC40-60-10. Definitions. In the definition of “Advance directive”, the Code of Virginia reference number was corrected to read § 54.1-2983.

22 VAC40-60-10. Definitions. The definition of “Department’s representative” was amended to reflect the current language of § 63.2 of the Code of Virginia.

22 VAC40-60-10. Definitions. The definition of “Respite care” was amended to correct the title of Licensed Assisted Living Facilities and to update the regulation number to 22VAC40-72-10 et seq.

22 VAC40-60-20. Legal base. The section was amended to reference the current Chapter (17) and Title (63.2) of the Code of Virginia that describes the responsibility of the Department of Social Services for the regulation of adult day care centers.

22 VAC40-60-30. Board authority. The section was amended to reference the current section (63.2-1733) of the Code of Virginia which requires the State Board of Social Services to prescribe standards for certain activities, services and facilities for adult day care centers.

22 VAC40-60-60. Facilities not covered. The title of State Board/Department of Mental Health, Mental Retardation and Substance Abuse Services was changed to reflect the current title of State Board/Department of Behavioral Health and Developmental Services.

22 VAC40-60-130. Financial responsibilities. The Code of Virginia reference number was changed from § 63.1-194.7 to the current number of § 63.2-1706.

22 VAC 40-60-200. General qualifications. This section was amended to correct the title of the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers.

22 VAC40-60-280. Orientation and staff training. This section was amended to reflect the current Code of Virginia section (§ 63.2-1606) that references the protection of aged or incapacitated adults and mandated and voluntary reporting of suspected abuse, neglect, or exploitation of program participants to the appropriate local department of social services.

22 VAC40-60-320. Director. The title of Board of Nursing Home Administrators was changed to reflect the current title of Board of Long-Term Care Administrators.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The final regulation Standards and Regulations for Licensed Adult Day Care Centers (22 VAC 40-60) was approved by the State Board of Social Services on February 15, 2012.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

By receiving care that protects their health, safety and welfare in licensed adult day care centers, participants are able to remain in their own homes or in the homes of their families instead of requiring institutional care. Often family members are able to continue employment because the participants are receiving needed care and protection during part of the day. Families and caregivers should have increased confidence in the care being given their center participant as a result of this regulation.

Periodic review

If this final regulation is not the result of a periodic review of the regulation, please delete this entire section. If this final regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response
Jane Bauknecht, Executive Director, Adult Care Center	22 VAC40-60-10. Page 1. Paragraph 7, line 1: Ambulatory="mentally capable of self preservation". (also note last paragraph, page 2). By this definition, hardly anyone in adult day care would be ambulatory. Is this the commonly understood definition for ambulatory, or specific just for these regulations? This was read by 2 nurses as well as myself and we found this confusing as generally ambulatory means "walking".	This is the definition of ambulatory as written in the Code of Virginia § 63.2-1705. This definition applies to both adult day care centers and assisted living facilities.
Virginia Adult Day Health Services Association	22 VAC40-60-10. Add new definitions: Infectious disease, Meals; add to existing definitions: to Licensed Health Care Professional: add occupational therapist; to Nurse: add nurse practitioner.	At the time of the next comprehensive revision the Division of Licensing Programs will discuss this suggestion with the Regulatory Advisory Panel.
Lynne K. Seward, CEO, A Grace Place Adult Care Center	22 VAC 40-60-160. Make consistent with HIPPA law and review other standards that relate to HIPPA.	Adult day care centers are exempt from HIPPA requirements. However, all participants' records are required to be treated confidentially.
Virginia Adult Day Health Services Association	22 VAC 40-60-160. Conform with HIPPA and review other standards for needed HIPPA-related language changes.	Adult day care centers are exempt from HIPPA requirements. However, all participants' records are required to be treated confidentially.
Terry Team, R.N., Executive Director, Daily Living Center Adult Day Health Care	22 VAC 40-60-235. I understand the regulations for TB test for staff and volunteers but have a concern when it comes to students who do clinical rotations through our program. These students have an initial TB test for school. Why should they have to have multiple TB test to do a rotation of one or two days ? This means as the students rotate they could actually have to have as many as two or more per year . This seems a little odd since staff only has to have	The Division of Licensing Programs has issued a guidance document on this subject. Additional technical assistance will be provided to this commenter.

	<p>one. It appears to me that if an accredited school of nursing is setting up clinical the students should only have one a year to cover those would be enough. I cannot find anything in the regulations that addressed this matter.</p>	
<p>Virginia Adult Day Health Services Association</p>	<p>22 VAC 40-60-235 B. 7. Per HR law, these and health records are to be kept in a separate file from employee personnel file.</p>	<p>The regulation does not require that all information be kept in a single file. The information may be kept separately as long as appropriate access to the information is available.</p>
<p>Lynne K. Seward, CEO, A Grace Place Adult Care Center</p>	<p>22 VAC 40-60-235 C. The entire TB section needs to be reviewed for appropriateness and current law, procedures. It is unrealistic to require TB tests on both short term and long term volunteers. For example, a performing group of singers may come to a center for one hour a year. To require a TB test would be both expensive and a disincentive to volunteer involvement. In addition, the activity program would be diminished as these enrichment activities cannot be offered under these requirements. A long term volunteer such as one who volunteers weekly or a student intern could have a TB test based on contact exposure. Review the need for annual TB testing for staff. Our local county Health Departments do not agree with testing staff annually. Staff in child care centers are tested every 2 years.</p>	<p>The Division of Licensing Programs has issued a guidance document on this subject. Additional technical assistance will be provided to this commenter.</p>
<p>Virginia Adult Day Health Services Association</p>	<p>22 VAC 40-60-235 C. Request entire TB section be reviewed for currency. It is unrealistic to comply with this standard as written. VADHSA would like to work with the Department to develop a TB screening risk matrix for various levels of exposure by volunteers and interns. As the standard is now written, even a volunteer who came for one hour, one time to play the piano would have to be tested first. The status of health and social services interns needs to be clarified to prevent them from having to be tested multiple times in</p>	<p>The Division of Licensing Programs has issued a guidance document on this subject. Additional technical assistance will be provided to this commenter.</p>

	a year as they rotate through various clinical placements, as it is being interpreted in some regions now. TB screening interval should be changed to every 2 years, consistent with childcare requirements.	
Virginia Adult Day Health Services Association	22 VAC 40-60-280 D. 14 and 15. Advance directive policies add “and staff persons’ roles”; how to safely and appropriately help participants perform activities of daily living (ADLs), including good body mechanics add “and personal care”.	At the time of the next comprehensive revision the Division of Licensing Programs will discuss this suggestion with the Regulatory Advisory Panel.
Lynne K. Seward, CEO, A Grace Place Adult Care Center	22 VAC 40-60-280 D. 15. Add personal care as this is a key activity	At the time of the next comprehensive revision the Division of Licensing Programs will discuss this suggestion with the Regulatory Advisory Panel.
Virginia Adult Day Health Services Association	22 VAC 40-60-550. Need technical assistance clarification of standard which is not being uniformly interpreted.	The Division of Licensing Programs will work to establish technical assistance in regard to this standard.
Lynne K. Seward, CEO, A Grace Place Adult Care Center	22 VAC 40-60-590. Add language to reflect the utilization of electronic records including electronic signatures, HIPPA requirements and other security issues.	The Division of Licensing Programs will work to establish technical assistance in regard to this standard.
Virginia Adult Day Health Services Association	22 VAC 40-60-590. Language should be added here, or via technical assistance, regarding electronic records in anticipation of their increasing utilization, clarify the status of electronic signatures, insure compliance with HIPPA requirements, and related security issues.	The Division of Licensing Programs will work to establish technical assistance in regard to this standard.
Lynne K. Seward, CEO, A Grace Place Adult Care Center	22 VAC 40-60-600. Please clarify the requirement and more clearly differentiate “30 days prior to admission”.	The Division of Licensing Programs will work to establish technical assistance in regard to this standard.
Virginia Adult Day Health Services Association	22 VAC 40-60-695 A. “Health care monitoring shall be <u>on-going...</u> ” needs to be clarified re frequency or other definition of “on-going”.	The Division of Licensing Programs will work to establish technical assistance in regard to this standard.
Jane Bauknecht, Executive Director, Adult Care Center	22 VAC 40-60-698 Medication Management. Page 39. Part E. #2 and 3. If a physician states <u>on the physician’s report form</u> , the written instructions for PRN meds (need dose, time, directions, if symptoms persist...) then , can medication aides be allowed to administer prn meds?	This question will be answered in technical assistance.

Virginia Adult Day Health Services Association	22 VAC 40-60-698. This section should be reviewed to insure compliance with new Board of Nursing regulations. Technical assistance clarification is needed about non-nurses administering prn meds where assessment of need is required.	This question will be answered in technical assistance.
Lynne K. Seward, CEO, A Grace Place Adult Care Center	22 VAC 40-60-699 3. d. Add non-latex gloves as a requirement to reflect current medical practice.	At the time of the next comprehensive revision, the Division of Licensing Programs will discuss this suggestion with the Regulatory Advisory Panel.
Virginia Adult Day Health Services Association	22 VAC 40-60-699 3. d. Stocking non-latex gloves should be required for use with those who are allergic.	At the time of the next comprehensive revision, the Division of Licensing Programs will discuss this suggestion with the Regulatory Advisory Panel.
Jane Bauknecht, Executive Director, Adult Care Center	22 VAC 40-60-980. Page 49. Remove syrup of ipecac and activated charcoal from required first aid and emergency supply list.	The Division of Licensing Programs will recommend that this clarification be included in the next proposed comprehensive revision of the adult day care center regulation.
Terry Team, R.N., Executive Director, Daily Living Center Adult Day Health Care	22 VAC 40-60-980. Activated charcoal-this has been in the regulations for our first aid kits since adult day care began. At that time it may have been necessary to have this on hand because we had no EMS and getting help for those who may need this was necessary. I have been a nurse since 1964 and have never seen this used and personally feel it needs to be removed from supplies needed in first aid kits in house and on our vans.	The Division of Licensing Programs will recommend that this clarification be included in the next proposed comprehensive revision of the adult day care center regulation.
Lynne K. Seward, CEO, A Grace Place Adult Care Center	22 VAC 40-60-980 A. 10, 15, and 16. Clarify what qualifies as “bee sting preparation”; remove syrup of ipecac as this is unavailable and not good medical practice; and remove activated charcoal as it is no longer commercially available and poison control centers do not recommend its use.	The Division of Licensing Programs will recommend that this clarification be included in the next proposed comprehensive revision of the adult day care center regulation.
Virginia Adult Day Health Services Association	22 VAC 40-60-980 A. 10, 15, and 16. Need definition of what else qualifies as “bee sting <u>preparation</u> ” since bee sting swabs are rarely/never needed, expensive to replace when out of date and are never used. Syrup of ipecac has already been removed as a requirement via technical assistance but continues to be listed in the standards. Activated	The Division of Licensing Programs will recommend that this clarification be included in the next proposed comprehensive revision of the adult day care center regulation.

	charcoal preparation requirement should also be removed. It is no longer commercially available and poison control centers do not recommend its use. Centers have to go to great lengths to special order an item that they will never be advised to use, and which, in fact could be dangerous to the population served, suggesting it should be locked up to prevent its use.	
Virginia Adult Day Health Services Association	22 VAC 40-60-1020 A. Written plan should be required for environmental/bio-hazard emergency; fire arm or criminal activity on the premises; and earthquake.	The Division of Licensing Programs will recommend that this clarification be included in the next proposed comprehensive revision of the adult day care center regulation.
Lynne K. Seward, CEO, A Grace Place Adult Care Center	General Comment: Throughout the document, replace “services” with “supports”.	The Division of Licensing Programs will recommend that this clarification be included in the next proposed comprehensive revision of the adult day care center regulation.
Virginia Adult Day Health Services Association	General Comment: Throughout replace “services” with “supports”.	The Division of Licensing Programs will recommend that this clarification be included in the next proposed comprehensive revision of the adult day care center regulation.
Lynne K. Seward, CEO, A Grace Place Adult Care Center	General Comment: Throughout the document, replace outdated language of “aged, infirm and disabled adults” to person centered language “older adults and persons with disabilities”; change “mental” to “cognitive” or “emotional”.	The Division of Licensing Programs will recommend that this clarification be included in the next proposed comprehensive revision of the adult day care center regulation.
Virginia Adult Day Health Services Association	General Comment: Update to inclusive, person-centered language changing “aged, infirm and disabled adults” to “older adults and persons with disabilities” throughout; change “mental” to “cognitive” or “emotional” as indicated, throughout.	The Division of Licensing Programs will recommend that this clarification be included in the next proposed comprehensive revision of the adult day care center regulation.
Virginia Adult Day Health Services Association	General Comment: Throughout replace Department of MH-MR-SAS to Department of Behavioral Health and Developmental Services.	This change was made in the current exempt action.

The regulation meets the criteria set out in Executive Order 14 in that it facilitates the efficient and effective operation of state government by clarifying the requirements for the operation of an adult day care center. The regulation is essential to protect the health, safety and welfare of participants of adult day care centers because there has been an increase in the health care needs of participants and a decrease in the functional level and independence of these participants.

The regulation is clearly written and understandable by the individuals affected. There have been very few questions regarding the clarity or understandability from licensees or the department's licensing staff since the regulation became effective in July 2000.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The regulation continues to be needed to protect the health, safety and welfare of participants of adult day care centers. The regulation covers several areas, such as administration; personnel; supervision; building and grounds; admission, retention and discharge; programs and services; and emergency preparedness. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation, but rather coordinates with other laws and regulations as necessary. The last comprehensive revision of the regulation was in 2000. The regulation attempts to keep up with developments and changes in technology, economic conditions, and the resident population. The agency has determined that the regulation should be amended to address current Code of Virginia references.